

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MATTHEW GULLICKSON,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. C20-1630-JCC

ORDER

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Theresa L. Fricke, United States Magistrate Judge (Dkt. No. 34). In the R&R, Judge Fricke recommends that the Government’s motion for partial summary judgment (Dkt. No. 26) be denied. (Dkt. No. 34 at 8.) The Government objects, arguing that Judge Fricke erred in applying a lesser-sanction analysis absent an affirmative request from Plaintiff to do so. (Dkt. No. 37 at 3–4.) The Court disagrees. It has “wide latitude” in exercising its “discretion to issue sanctions under Rule 37(c)(1).” *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001). Excluding Dr. Braun’s testimony on the reasonableness of billed medical expenses to date is an overly harsh sanction for an offense whose harm can be easily cured.

Accordingly, the Court ORDERS as follows:

1. The Government’s objections (Dkt. No. 37) are OVERRULED;
2. the R&R (Dkt. No. 34) is ADOPTED;

3. the Government's motion for partial summary judgment (Dkt. No. 26) is DENIED;
4. the Government may re-depose Dr. Braun for no more than two hours solely on the topic of his review and analysis of the reasonableness of the amount of Plaintiff's medical bills; and
5. Plaintiff must pay costs and reasonable attorney fees associated with re-opening Dr. Braun's deposition, including preparation time.

If the Government finds that it is impossible or impractical to re-depose Dr. Braun prior to trial, it may move for relief from this deadline.

DATED this 23rd day of February 2022.

A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE